

**SANDERS LAW GROUP**

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

Robert Miller,

Plaintiff,

v.

Bleacher Report, Inc.,

Defendant.

Case No:

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

Plaintiff Robert Miller ("*Plaintiff*"), by and through its undersigned counsel, for its Complaint against defendant Bleacher Report, Inc. ("*Defendant*") states and alleges as follows:

**INTRODUCTION**

1. This action seeks to recover damages for copyright infringement.
2. Plaintiff herein provides photojournalism goods and services and owns the rights to these images which Plaintiff licenses to online and print publications.
3. Defendant owns and operates a website known as bleacherreport.com (the "*Website*").
4. Defendant, without permission or authorization from Plaintiff actively copied, and displayed Plaintiff's Photograph on the Website and engaged in this misconduct knowingly and in violation of the United States copyright laws.

**PARTIES**

5. Plaintiff Robert Miller is an individual who is a citizen of the State of Nebraska and maintains a principal place of business 301 West 118th Street Unit 5K, New York in County, Nebraska.

6. On information and belief, defendant Bleacher Report, Inc., is an individual who is a citizen of the State of New York with a principal place of business at 29 West 17th Street, New York in New York County, New York and is liable and responsible to Plaintiff based on the facts herein alleged.

**JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction over the federal copyright infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

8. This Court has personal jurisdiction over Bleacher Report, Inc. because it maintains its principal place of business in New York.

9. Venue is proper under 28 U.S.C. §1391(a)(2) because Bleacher Report, Inc. does business in this Judicial District and/or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

**FACTS COMMON TO ALL CLAIMS**

10. Plaintiff is a professional photographer by trade who is the legal and rightful owners of photographs which Plaintiff licenses to online and print publications.

11. Plaintiff has invested significant time and money in building Plaintiff's photograph portfolio.

12. Plaintiff has obtained active and valid copyright registrations from the United States Copyright Office (the "USCO") which cover many of Plaintiff's photographs while many others are the subject of pending copyright applications.

13. Plaintiff's photographs are original, creative works in which Plaintiff's own protectable copyright interests.

14. The Website is a popular and lucrative commercial enterprise.

1           15. The Website is monetized in that it contains paid advertisements and, on  
2 information and belief, Defendant profits from these activities.

3           16. The Website is monetized in that sells merchandise to the public and, on  
4 information and belief, Defendant profits from these activities.

5           17. On February 1, 2019 Plaintiff authored a photograph of (the “*Photograph*”). A  
6 copy of the Photograph is attached hereto as Exhibit 1.

7           18. Plaintiff applied to the USCO to register the Photograph on April 1, 2019 under  
8 Application No. 1-7561405635.

9           19. The Photograph was registered by USCO on April 1, 2019 under Registration  
10 No. VA 2-145-446.

11           20. On February 4, 2019 Plaintiff first observed the Photograph on the Website. A  
12 copy of screengrab of Website including the Photograph is attached hereto as Exhibit 2.

13           21. The Photograph was displayed at URL: [https://bleacherreport.com/dallas-](https://bleacherreport.com/dallas-mavericks)  
14 [mavericks](https://bleacherreport.com/dallas-mavericks).

15           22. Without permission or authorization from Plaintiff, Defendant volitionally  
16 selected, copied, and displayed Plaintiff copyright protected Photograph as is set forth in  
17 Exhibit “1” on the Website.

18           23. On information and belief, the Photograph was copied and displayed without  
19 license or permission, thereby infringing on Plaintiff’s copyrights (hereinafter the  
20 “*Infringement*”).

21           24. The Infringement includes a URL (“*Uniform Resource Locator*”) for a fixed  
22 tangible medium of expression that was sufficiently permanent or stable to permit it to be  
23 communicated for a period of more than transitory duration and therefore constitutes a specific  
24 infringement. *17 U.S.C. §106(5); Perfect 10, Inc. v. Amazon.com, Inc.* 508 F.3d 1146, 1160 (9th  
25 Cir. 2007).

26           25. The Infringement is an exact copy of the entirety of Plaintiff’s original image  
27 that was directly copied and displayed by Defendant on the Website.  
28

1           26. On information and belief, Defendant takes an active and pervasive role in the  
2 content posted on its Website, including, but not limited to copying, posting, selecting,  
3 commenting on and/or displaying images including but not limited to Plaintiff's Photograph.

4           27. On information and belief, Defendant directly contributes to the content posted  
5 on the Website by, inter alia, directly employing reporters, authors and editors as its agents  
6 ("Employees").

7           28. On information and belief, at all material times the Employees were acting  
8 within the course and scope of their employment when they posted the Infringement.

9           29. On information and belief, at all material times the Employees were acting  
10 within the course and scope of their agency when they posted the Infringement.

11           30. On information and belief, the Photograph was willfully and volitionally posted  
12 to the Website by Defendant.

13           31. On information and belief, Defendant was aware of facts or circumstances from  
14 which the determination regarding the Infringement was apparent. Defendant cannot claim that  
15 it was not aware of the infringing activities, including the specific Infringement which form the  
16 basis of this complaint, since such a claim would amount to only willful blindness to the  
17 Infringement on the part of Defendant.

18           32. On information and belief, Defendant engaged in the Infringement knowingly  
19 and in violation of applicable United States Copyright Laws.

20           33. On information and belief, Defendant had complete control over and actively  
21 reviewed and monitored the content posted on the Website.

22           34. On information and belief, Defendant has the legal right and ability to control  
23 and limit the infringing activities on its Website and exercised and/or had the right and ability  
24 to exercise such right.

25           35. On information and belief, Defendant monitors the content on its Website.

26           36. On information and belief, Defendant has received a financial benefit directly  
27 attributable to the Infringement.  
28



Code, in that they used, published, communicated, posted, publicized, and otherwise held out to the public for commercial benefit, the original and unique Photograph of the Plaintiff without Plaintiff's consent or authority, by using them in the infringing articles on the Website.

48. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to any an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against each Defendant for each infringement pursuant to 17 U.S.C. § 504(c).

49. As a result of the Defendant' violations of Title 17 of the U.S. Code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.

50. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

#### **JURY DEMAND**

51. Plaintiff hereby demands a trial of this action by jury.

#### **PRAYER FOR RELIEF**

**WHEREFORE** Plaintiff respectfully requests judgment as follows:

That the Court enters a judgment finding that Defendant has infringed on Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 et seq. and award damages and monetary relief as follows:

- a. finding that Defendant infringed Plaintiff's copyright interest in the Photograph by copying and displaying without a license or consent;
- b. for an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an

award for statutory damages against each Defendant for each infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;

c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from any infringing use of any of Plaintiff's works;

d. for costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505;

e. for pre judgment interest as permitted by law; and

f. for any other relief the Court deems just and proper.

DATED: February 4, 2022

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